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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition For Relief From)
Unjust And Unreasonable)
Discrimination In The)
Deployment of Video Dialtone)
Facilities)
)
Petition For Rulemaking)
To Adapt The Section 214 Process)
To The Construction of Video)
Dialtone Facilities)

DA 94-621

JUN 12 1994

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RM-8491

OPPOSITION OF BELL ATLANTIC

Through applications to provide video dialtone service, Bell Atlantic¹ has requested authority to serve a broad spectrum of the population, including the groups identified in the above captioned Petitions.² Although the petitioners properly raise concerns about the relationship between the deployment of new technology and universal service, the important underlying universal service issues cannot be addressed by burdening the 214 applications process. By calling for a new layer of regulatory requirements, the Petitions would slow any deployment of video dialtone. This

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic - Delaware, Inc.; Bell Atlantic - Washington, D.C., Inc.; Bell Atlantic - West Virginia, Inc.; Bell Atlantic - Pennsylvania, Inc.; Bell Atlantic - Maryland, Inc.; Bell Atlantic - New Jersey, Inc.; and Bell Atlantic - Virginia, Inc.

² *Petition For Relief From Unjust And Unreasonable Discrimination In The Deployment Of Video Dialtone Facilities*, (filed May 23, 1994); *Petition For Rulemaking To Adapt The Section 214 Process To The Construction Of Video Dialtone Facilities* (filed May 23, 1994).

would have the perverse impact of denying these services to the very constituencies the Petitions seek to protect.

In addition, the term "redlining" -- not defined in the Petitions -- is an emotionally charged allegation that has come to be associated with intentional racial discrimination.³ There is simply no legitimate factual basis to make such a charge against Bell Atlantic. By making such egregious charges on limited and misleading factual underpinnings, petitioners do a disservice to the discussion of the important issues concerning the scope and funding of universal service.

I. Bell Atlantic's Deployment Schedule is Nondiscriminatory.

In a pair of applications filed June 16, 1994, Bell Atlantic sought Commission approval to deploy video dialtone service to millions of homes.⁴ When compared to the population of the Bell Atlantic region as a whole, minorities are over-represented in this deployment. While 23.8% of the population in Bell Atlantic's region are minority, the minority residential population included in the deployment is 36.2%. This relationship holds true when the

³ See, e.g., Frank Green, *Inner-City Costs High, Consumer Panel Finds*, San Diego Union-Tribune, Oct. 7, 1993, at C-1 ("Redlining is a tactic for discriminating against consumers because of their race or the neighborhood in which they live").

⁴ See *Application of The Bell Atlantic telephone companies*, WPC-6966 (filed June 16, 1994) (Hybrid System Application); *Application of The Chesapeake and Potomac Telephone Companies of Maryland and Virginia*, Amendment, WPC-6912 (filed June 16, 1994) (Washington Amendment).

statistics are broken down to individually examine the populations of African-Americans, Hispanics and other minorities.⁵

Bell Atlantic's June 16 applications also propose to provide video dialtone service to households with a variety of levels of income. For example, 20% of the homes passed in the deployment have household incomes of less than \$20,000. The majority of homes passed have household incomes under \$50,000. There is simply no basis to claim that any group has been excluded.

The Cooper Affidavit attached to the Petition For Relief also alleges that Bell Atlantic specifically excluded Washington, D.C. and Prince George's County from its plans to deploy video dialtone.⁶ In fact, these areas are included in the first major deployment of Bell Atlantic's hybrid fiber-coax infrastructure. Moreover, portions of these areas are initially scheduled to receive interactive services using ADSL technology over existing copper lines, allowing the benefits of interactive video to reach

⁵ See Attachment 1.

⁶ Affidavit of Mark N. Cooper (May 19, 1994), attached to Petition for Relief ("Cooper Affidavit") at 6. In addition to the Washington metro area, the Cooper Affidavit highlights Bell Atlantic-New Jersey's application to serve Toms River (Dover Township), New Jersey. The Commission has already announced approval of this application. Public Notice, Report No. CC-580, rel. July 6, 1994. Regardless, Mark Cooper's own statistics show household income for that deployment to be *lower* than the state average. Cooper Affidavit at Exhibit 1. Moreover, the size of that application is dwarfed in comparison to the broader deployment for which Bell Atlantic sought approval on June 16. *Compare* Washington Amendment (1.2 million potential end users) and the Hybrid System Application (2 million potential end users) *with Application of New Jersey Bell Telephone Company*, Amendment and Clarification, W-P-C 6840 (filed Sept. 2, 1993) (38 thousand potential end-users).

them even sooner than the areas that will be served entirely over the hybrid architecture.⁷ While the 214 application covering this aspect of Bell Atlantic's video dialtone deployment were filed June 16, Bell Atlantic's earlier announcement of its plans and general information on site locations was widely reported prior to the filing of the Petitions.⁸

Bell Atlantic's applications are not only inclusive in terms of deployment, but also in terms of access to the network. Bell Atlantic's unique "will carry" proposal, in particular, offers low capitalized programmers the opportunity to purchase as little as a single channel and still have a viable opportunity to reach a wide market. Because Bell Atlantic's proposed structure provides end-user customers with analog access to local over-the-air broadcast and PEG channels (without additional charge), end-users who subscribe to a single digital channel will still receive all these offerings. This innovative use of analog channels would allow niche programmers with specific cultural and ethnic markets to offer their services economically, yet compete with larger mainstream programmers.

⁷ See Washington Amendment at 2-3.

⁸ See, e.g., Paul Farhi, *Bell Atlantic Plans Interactive Video Service in Six Markets*, Washington Post, May 20, 1994 at F2; John J. Keller, *Bell Atlantic Throws Multimedia Dice, Kicking Off \$11 Billion Network Plan*, Wall Street Journal, May 20, 1994 at B3. It is ironic that the same day Mark Cooper signed his affidavit complaining of Bell Atlantic's alleged failure to deploy in the nation's capital, the Deputy Mayor of Washington sent a letter to the president of Bell Atlantic-Washington, D.C. applauding Bell Atlantic "for selecting Washington, D.C. to be among the first cities to receive a video dialtone network." Letter from Robert L. Mallett to Mr. William Freeman, attached hereto as Attachment 2.

Furthermore, Bell Atlantic's deployment of information age services goes beyond proposals included in its video dialtone applications. For example, in Union City New Jersey -- a municipality with a majority of Hispanic residents -- Bell Atlantic has deployed an electronic communication system linking parents and students with their school.

II. Additional 214 Requirements Will Slow Deployment to Everyone.

Petitioners rightly claim that video dialtone has the potential for great societal benefit.⁹ They are wrong to suggest that adding an additional layer of regulation to the already congested 214 process is a sound method for ensuring deployment of these services to a wide range of households.

While Bell Atlantic applauds the Chairman's announced intention to move on existing video dialtone applications with dispatch,¹⁰ adding an additional layer of regulation would play into the hands of those who would try to game the regulatory process to their competitive advantage by slowing video dialtone deployment. By enabling a small number of intervenors to slow *any*

⁹ See Petition for Relief at 13. It is surprising that the Consumer Federation of America ("CFA") is a cosponsor of this petition extolling the importance of broad deployment of video dialtone. The CFA has been a strong advocate of denying Bell Atlantic and other telephone companies the ability to provide *any* video services. See, e.g., *Telephone Company-Cable Television Cross-Ownership Rules*, Section 63.54-63.58, CC Docket No. 87-266 Comments of Consumer Federation of America at 1 (filed Dec. 16, 1988) (CFA submits that the Commission has failed to demonstrate that "consumers would benefit from greater participation by the telephone industry in the provision of cable services . . .").

¹⁰ Christopher Stern, *Hundt has dialtone on fast track*, Broadcast & Cable, April 18, 1994, at 6.

deployment of video dialtone, the proposed regulations would punish the very individuals they seek to protect.¹¹ Delay in approving the initial video dialtone projects will also have the unintended effect of delaying commencement of subsequent projects. Even universal deployment of a service must have a starting point. To deny a company an ability to select that starting point effectively delays service not only for those initial customers, but for the many customers that would be served by subsequent growth.

III. Universal Service Issues Should Be Broadly Addressed.

In recent years, universal service issues have become increasingly complex. Petitioners are correct in their concern that deployment of new technology raises issues as to the appropriate level of service subject to universal service requirements. An explosion of new competition also raises issues of how to fund any subsidies necessary to support universal service. These interrelated issues should be addressed in a comprehensive manner, and not in the context of reviewing the location of an individual video dialtone project.

These issues are addressed in pending federal legislation and are already before the Commission.¹² The Commission should, and

¹¹ There is already ample opportunity for public input at the local level. In several states, Bell Atlantic has held extensive public hearings in conjunction with state proceedings reviewing network modernization proposals. In addition, Bell Atlantic plans to work with the local governmental authorities in each of its video dialtone deployment sites to address concerns that may arise at the local level.

¹² See, e.g., *Inquiry Into Policies and Programs to Assure Universal Telephone Service in a Competitive Market Environment*, RM-8388; *Reform of the Interstate Access Charge Rules*, RM-8356.

inevitably will, address these issues in an appropriate forum. By making unfounded claims of discrimination and seeking new requirements in the already overburdened 214 application process, petitioners do these important issues a disservice.

In addition to proceedings to address universal service, other avenues exist for supporting new services for minority and low income individuals. Petitioners and others should support Bell Atlantic's efforts to streamline the 214 application process, thereby allowing faster deployment of these services. They should also support Bell Atlantic's proposal to modify the price cap formula for local exchange carriers to include an optional incentive to target infrastructure funds to Commission approved areas such as education and health care.¹³ Broad availability is ultimately served by rapid deployment, not by demographic tests imposed on individual applications.

IV. Conclusion

The underlying issues of universal service and inclusion are important concerns shared by Bell Atlantic. While Bell Atlantic looks forward to the opportunity to address these issues in the appropriate forum, the importance of the issues is not a basis to make a bad policy decision that would slow video dialtone

¹³ *Price Cap Performance Review for Local Exchange Carriers*, CC Docket 94-1, Reply Comments of Bell Atlantic at 18-19 (June 29, 1994).

deployment and perversely cause the very harm complained of. For the reasons set forth above, the Commission should deny both petitions.

Respectfully submitted,

The Bell Atlantic Telephone Companies
By Their Attorneys

Edward D. Young, III
Of Counsel

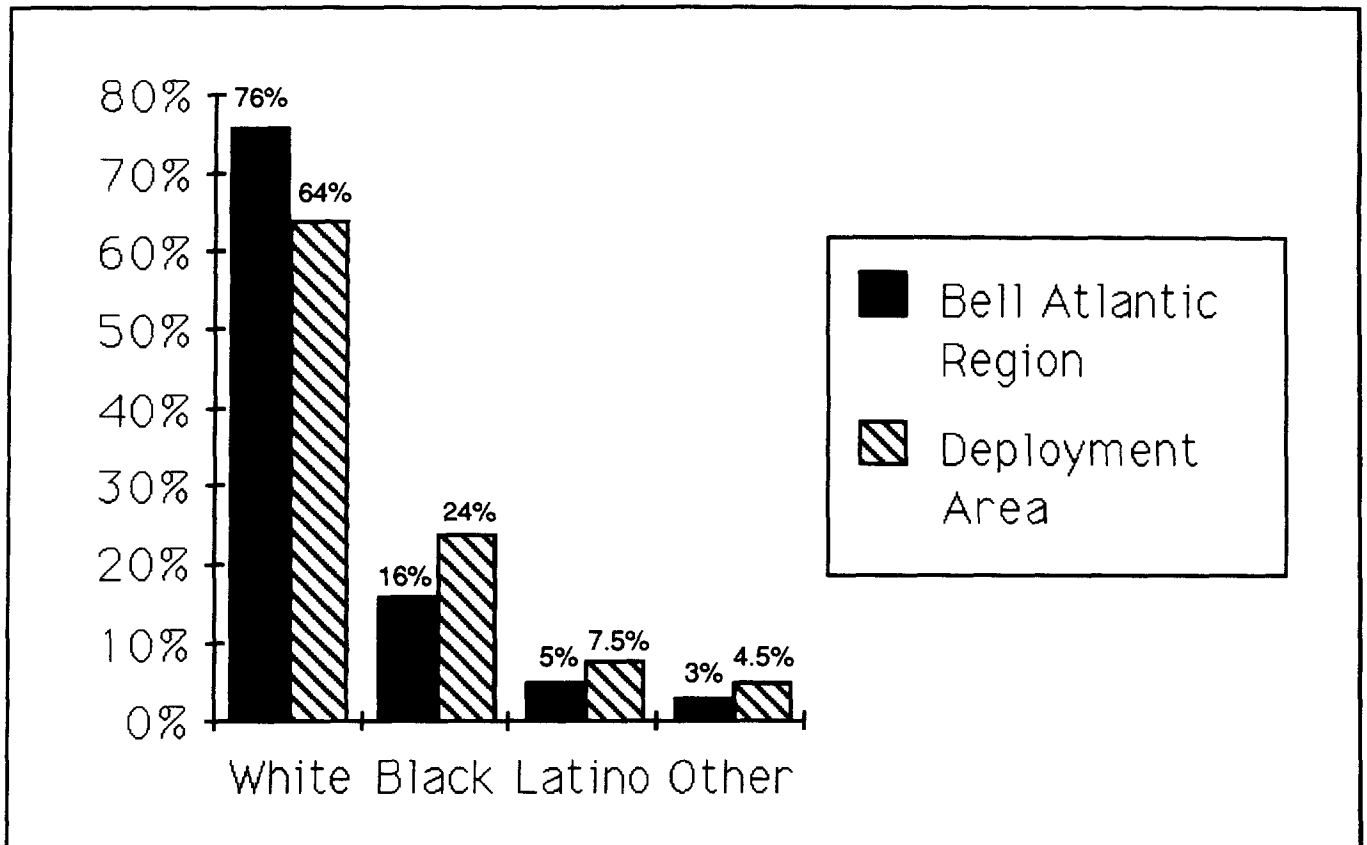


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Dated: July 12, 1994

Racial Composition



In total, minorities constitute 24% of the population in the Bell Atlantic region and 36% in the deployment area.

Source: Claritas; Ithaca, NY

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE

ROBERT L. MALLET
CITY ADMINISTRATOR
DEPUTY MAYOR FOR OPERATIONS
WASHINGTON, D.C. 20004



May 19, 1994

Mr. William Freeman
President & Chief Executive Officer
Bell Atlantic
1710 H Street, N.W.
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Washington, D.C. 20006

Dear Bill:

I applaud Bell Atlantic for selecting Washington, D.C. to be among the first cities to receive a video dialtone network. This state-of-the-art technology will make Washington, D.C. stronger and more competitive because its features and benefits should attract people and business to the city. Bell Atlantic has been a valuable partner with the District government and a fine corporate citizen. The video dialtone network is exciting news for us all.

Sincerely yours,

Robert L. Mallett
Robert L. Mallett

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 1994, a copy of the foregoing "Opposition of Bell Atlantic" was served by first-class U.S. Mail, postage prepaid, to the parties on the attached service list.

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